Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1892

BART B. CHAMBERLAIN, JR.,

Petitioner

v.

JEROME KURTZ, COMMISSIONER OF INTERNAL REVENUE, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY MEMORANDUM

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The Government's Memorandum skillfully avoids dealing with the real issues raised by the Petition for Certiorari. Instead, the Government pitches its argument upon an invalid assumption about the factual record and an equally invalid conclusion about a material issue of law.

1. The erroneous factual assumption is that the Court of Appeals "upheld the Commissioner only after an independent examination of the documents themselves and of the relevant surrounding facts that showed that 'the Government has established' that disclosure [of the documents sought by Chamberlain] would seriously impair tax administration"; Memorandum for the Respondents, p. 6.

Nothing in the Court of Appeals' opinion supports the conclusion that that court made any "independent examination" of the documents. Its opinion, instead, leads only to the conclusion that it relied entirely upon the conclusory statement of the Acting Commissioner and, perhaps, the document descriptions provided by the parties.[1]

2. The Government's erroneous legal conclusion is that, if the Court of Appeals had in fact examined the documents in issue, its action would have corrected the abuses of the Acting Commissioner. The Government incorrectly assumes that the Court of Appeals could properly have made an independent determination whether "disclosure of the documents at issue would seriously impair federal tax administration."

The facts in this case suggest precisely why that view of the law is so dubious as to require review by this Court.

The Court of Appeals, unlike the Acting Commissioner, totally lacks the factual information that

[1] The Court of Appeals' opinion reports only that that court examined 16, of all the documents before it, merely to make a preliminary determination whether they were, in fact, "return information." Nothing suggests that any other documents were examined.

would permit it to make an informed determination whether release of documents sought would "doubtless be of benefit to" the document requester. The Court of Appeals did not have before it the information about the proceeding before the IRS that is available to the administrator, or to Chamberlain. The Court of Appeals did not have before it the substantial volume of documents turned over to Chamberlain by the Government prior to judgment in this case; and hence it had not even the limited information about the state of Chamberlain's knowledge that those documents would have given it. The Court of Appeals, unlike the IRS, had absolutely no factual background about the total state of Chamberlain's knowledge such as to permit it to make the independent determination whether, or to what extent, any information produced by the Internal Revenue Service would "benefit" Chamberlain in preparation of his case before the agency. Unlike the administrator, the Court of Appeals had no basis to determine whether any documents, if produced, would create "damage to tax collection."

In any case in which there is a demand for disclosure of documents, the agency has in its possession, and the requester may have in his possession, a substantially broader fund of information and of documents than that made available to a court in a record that deals solely with the limited number of documents remaining in dispute.

It is precisely this fact, that a substantial informational gap must exist in the knowledge of any court, that suggests why mere conclusory administrative refusals to produce, based on 26 U.S.C.

§6103(c) or (e)(6), are inappropriate. A rational disposition within the intent of the statute can be achieved only by requiring the administrative officer to present to the Court, for review, a decision supported by stated factual grounds, so that the Court of Appeals is able to review, not the documents which tell only a part of the story, but the decision of the administrator.

The Government, however, argues that this Court need not be concerned with blind judicial acceptance of conclusory statements by the Commissioner, because it may rely instead upon the astigmatic consideration given to only a skewed portion of the entire picture by a reviewing court.

Respectfully submitted,

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